

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KINGFLY SPIRITS, LLC, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civil Action No. 22-50E
)	
v.)	Judge Cathy Bissoon
)	
BLAKE RAGGHIANTI, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Defendant JORG GERLACH's Motion to Dismiss (**Doc. 98**) is **DENIED AS MOOT**, without prejudice to renewal at a later date, as described below.

On November 4, 2022, Plaintiffs filed a First Amended Complaint (Doc. 66).

As indicated in the Clerk of Court's Notice dated January 23, 2023, Plaintiffs have failed to show that Defendants JORG GERLACH and ECHT, LLC have been served a summons attaching a copy of the Amended Complaint.¹

Plaintiffs' filing of an Amended Complaint renders the original Complaint a legal nullity, Palakovic v. Wetzel, 854 F.3d 209, 220 (3d Cir. 2017), and these Defendants presently owe no duty to answer or otherwise respond. Once it has been established that Defendants properly have

¹ Mr. Gerlach did not receive the Clerk of Court's January 23rd Notice given that, until now, he had not formally entered an appearance in this case. If Mr. Gerlach wishes to view the Notice, and all other filings in this case, he may do so by becoming a registered CM/ECF (PACER) user. *See* discussions below.

been served a copy of the operative (*i.e.*, most recent) complaint, Defendants may file renewed motion(s) to dismiss.²

Also, the Court notes that the present Motion to Dismiss seeks dismissal of the claims against both the individual Defendant, JORG GERLACH, and the company of which he is sole proprietor, Defendant ECHT, LLC. *See* Doc. 98 at pg. 2. Defendant is advised that “even single-member LLCs . . . may appear in federal court only through [licensed legal] counsel.”

Dougherty v. Snyder, 621 Fed. Appx. 715, 716 (3d Cir. Aug. 7, 2015) (emphasis added).

In other words, the individual Defendant cannot seek dismissal, or otherwise appear on behalf of, the LLC to present any type of defense. He may only represent himself, the individual.

Finally, in the present Motion to Dismiss, JORG GERLACH has supplied an email address (office@echt-project.com) at which he may be reached. For logistical reasons, communicating official Court information to Defendant by email (*e.g.*, sending him copies of orders, and links for videoconferences) is preferable to sending it via regular First-Class U.S. mail. In light of Mr. Gerlach’s having offered his email address in this case, it will be presumed that the service of all filings from the Court may be made on him via email.³ Should Defendant

² Notably, Plaintiffs have introduced the possibility that they might file a *second* amended complaint, and the Court has granted them until January 31, 2023 to do so. *See* Order at Doc. 88 (granting Plaintiffs’ request to potentially file a second amended complaint, by January 31st, with no further extensions, and indicating that, “[s]hould Plaintiffs file a second amended complaint, they must make last, best efforts at amendment, because the Court does not anticipate granting further leave to amend”). Of course, if Plaintiffs file a second amended complaint, they are required to properly serve it on all Defendants, consistent with the Federal Rules of Civil Procedure. Should Plaintiffs file and properly serve a second amended complaint, the First Amended Complaint would be rendered a nullity, and any motions to dismiss it would be deniable as moot.

³ Given the individual Defendant’s inability to appear on behalf of the LLC, the foregoing provisions apply only to the individual. Once it has been demonstrated that ECHT, LLC, has been properly served with the operative (*i.e.*, most recent) amended complaint, the only way

object to this procedure, by **February 3, 2023**, he must file on the docket a response showing good cause why it should not be adopted. If Defendant does not object, no filing is required. The instant Order presently will be sent to Defendant at the above email address, and by First-Class U.S. Mail. To be clear, absent a showing of good cause by **February 3, 2023**, future orders will NOT be sent to him by regular U.S. Mail, only by email.⁴

IT IS SO ORDERED.

January 25, 2023

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All Counsel of Record

cc (via First-Class U.S. Mail, and email):

Jorg C. Gerlach
107 Penn Avenue
Pittsburgh, PA 15210

office@echt-project.com

for it to defend the case (and avoid the possibility of having default and default judgment entered against it) is to have licensed legal counsel enter an appearance on its behalf.

⁴ Alternatively, Defendant JORG GERLACH may elect to become a registered user of the Court's CM/ECF (electronic filing) system. This would allow him to receive instant notifications of any filings in this case, and to review and access filed-documents in electronic (PDF) form. Although the Court cannot require Defendant to become a registered user, the undersigned believes he will find it highly beneficial to have access to the case docket, and to be assured that he is receiving up-to-date information regarding filings in this case. Information on signing up for the CM/ECF system (which is achieved through the acquisition of a "PACER" account) can be found at the following web link: <https://www.pawd.uscourts.gov/case-info/cm-ecf-case-info>.